

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

SAMANTHA J BALLALATAK
Claimant

APPEAL NO. 10A-UI-10648-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SDH SERVICES WEST LLC
Employer

OC: 06-06-10
Claimant: Respondent (2)

Iowa Code § 96.4(3) – Able and Available
871 IAC 24.23(26) – Same Hours and Wages

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 19, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 15, 2010. The claimant did participate. The employer did participate through Tom Singer, General Manager.

ISSUE:

Was the claimant able to and available for work or was she employed at the same hours and wages?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a baker full time beginning in April, 2008 through July 16, 2010 when she was separated. Her separation is not at issue in this case. The claimant received unemployment insurance benefits from June 6, 2010 through July 16, 2010. The claimant was hired to work 37.5 hours per week. Her hours were reduced only when she asked the employer to change her schedule so that she could work additional hours at her second job with a department store. The only reason the claimant's hours were changed was at her own request.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially

unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.23(16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

The claimant asked the employer to change her hours to accommodate her other job. Under such circumstances, that is the claimant's unwillingness to work the hours when work was available for her, she is not considered to be able to and available for work. Accordingly, benefits are denied.

DECISION:

The July 19, 2010, reference 01, decision is reversed. The claimant is not able to work and available for work effective June 6, 2010. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css